## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS **AUSTIN DIVISION**

Robert J. Marshall, Individually	§		
and as Trustee of the HWO Trust,	§		
	§		
Plain	tiff, §		
V.	§		
	§	CASE NO:	1:13-cv-00502
Internal Revenue Service,	§		
	§		
Defend	ant. §		
	§		

## **COMPLAINT FOR DECLARATORY RELIEF UNDER THE FREEDOM OF INFORMATION ACT**

Robert J. Marshall ("Plaintiff") files this Complaint for Declaratory Relief individually and as the Trustee of the HWO Trust against the Internal Revenue Service ("Defendant"). Plaintiff alleges as follows:

#### I. PRELIMINARY STATEMENT

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking the disclosure and release of agency records improperly withheld from Plaintiff by Defendant.

#### II. **PARTIES**

- 2. Plaintiff is an individual residing in Round Rock, Texas.
- 3. Plaintiff is also the Trustee of the HWO Trust, whose principal place of business is at 30 Wadley Place, Building B, Austin, Texas 78728.
- 4. Defendant is a component entity of the U.S. Department of Treasury, an agency within the meaning of 5 U.S.C. § 552(f). Defendant has possession, custody and control of the documents Plaintiff seeks.

#### III. **JURISDICTION AND VENUE**

- 5. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States.
- 6. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiff resides and has his principal place of business within this district.

#### IV. **BACKGROUND**

- 7. By letter dated August 14, 2012, Plaintiff submitted his FOIA request to Defendant for "documents referring to or referencing [Plaintiff] for tax years 1996 through 2012" including "tax returns, return information, records of any investigations, examinations and/or any other information-gathering activities carried out by agents of the Internal Revenue Service concerning [Plaintiff]." A copy of the request is attached as Exhibit 1.
- 8. By separate letter dated August 14, 2012, Plaintiff, as Trustee of the HWO Trust, submitted a FOIA request to Defendant for "documents referring to or referencing [the HWO Trust for tax years 1996 through 2012" including "tax returns, return information, records of any investigations, examinations and/or any other information-gathering activities carried out by agents of the Internal Revenue Service concerning [the HWO Trust]." A copy of the request is attached as Exhibit 2.
- 9. Defendant responded to the aforementioned FOIA requests in a letter dated November 14, 2012, which stated: "Of the 4713 pages located in response to you request, I am enclosing 1473 pages. I am withholding 166 pages in part and 3074 pages in full . . . . " Defendant's letter indicated that the following FOIA exemptions were relied upon to withhold

responsive information from Plaintiff: (i) 5 U.S.C. § 552(b)(3); (ii) 5 U.S.C. § 552(b)(5); (iii) 5 U.S.C. § 552(b)(7)(A); and (iv) 5 U.S.C. § 552(b)(7)(C). Defendant's letter did not provide any information regarding the types of documents withheld under each exemption or any statements explaining why a particular withheld document was subject to the asserted exemption. A copy of Defendant's response is attached as Exhibit 3.

- 10. By letter dated December 19, 2012, Plaintiff timely appealed to the office of IRS Appeals Defendant's partial denial of Plaintiff's FOIA requests. A copy of Plaintiff's appeal letter is attached as Exhibit 4.
- By letter dated January 18, 2013, Defendant denied Plaintiff's appeal. A copy of 11. Defendant's letter denying Plaintiff's appeal is attached as Exhibit 5.
- 12. Plaintiff has exhausted all applicable administrative remedies with respect to Plaintiff's FOIA requests.

### V. **BASIS FOR DECLARATORY RELIEF**

- 13. Plaintiff repeats and re-alleges paragraphs 1-12.
- Plaintiff properly requested documents and materials within the possession, 14. custody and control of Defendant.
  - 15. Plaintiff is entitled by law to access the documents and materials requested.
- 16. Exemptions to disclosure under FOIA are explicitly limited by statute and should be construed narrowly. Dep't of the Air Force v. Rose, 425 U.S. 352, 361 (1976).
- 17. Defendant failed to provide Plaintiff with an assurance of compliance with FOIA's segregability requirement under 5 U.S.C. § 552(b).
- Defendant failed to provide Plaintiff with information regarding the custodian and 18. recipients of each withheld document.

19. Defendant failed to sufficiently identify the withheld documents, provide a description of information contained in each withheld document or explain why the asserted exemptions justified withholding the document. As a result, Plaintiff was deprived of the ability to determine the validity of Defendant's claimed exemptions.

20. Defendant waived any basis for exempting or redacting information by failing to provide a detailed justification for its refusal to disclose the requested documents and materials, providing nothing more than general, conclusory statements.

## VI. <u>BURDEN OF PROOF</u>

21. Defendant has the burden to prove *de novo* that the requested information is exempt from disclosure. 5 U.S.C. § 552(a)(4)(B).

### VII. PRAYER

Plaintiff respectfully prays that this Court:

- A. Enter an order declaring that Defendant failed to satisfy any claimed exemptions under FOIA and requiring Defendant to immediately provide all requested information and materials to Plaintiff;
  - B. Award Plaintiff his costs and reasonable attorneys fees in this action; and
  - C. Grant other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

By: /s/ Charles M. Meadows, Jr.
Charles M. Meadows
Texas State Bar No. 13886700
Stephen A. Beck
Texas State Bar No. 24006821

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Dated: June 14, 2013

ATTORNEYS FOR PLAINTIFFS